

# **Policies and Procedures Applicable to State-Authorized Unclaimed Property Examinations Conducted by Contractors**



**KATHLEEN CONNELL**  
California State Controller

September 1999

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# Introduction

<b>Guidelines</b>	<p>The following guidelines have been adopted pursuant to California’s Code of Civil Procedure (CCP), Section 1571(c) which states: “Following a public hearing, the Controller shall adopt guidelines as to the policies and procedures governing the activity of third-party auditors who are hired by the Controller.”</p>
<b>Statement of Purpose</b>	<p>The guidelines contain policy and procedures governing the activities of third-party auditors conducting examinations under California’s Unclaimed Property Program. The guidelines are designed to:</p> <ol style="list-style-type: none"><li>1. Ensure that the examinations by third-party auditors are conducted objectively and impartially.</li><li>2. Ensure that the examinations are completed promptly and without undue burden to the holders.</li><li>3. Ensure that strict confidentiality is maintained for records obtained from the state and the holders.</li><li>4. Ensure that the holder under examination is fully apprised of its appeal rights.</li></ol>
<b>Authority to Conduct Unclaimed Property Examinations</b>	<p>CCP, Section 1571 (a) provides authority for the Office of the State Controller (SCO), at reasonable times and upon reasonable notice, to examine the records of any person if the Controller has reason to believe that the person is a holder who has failed to report property that should have been reported pursuant to CCP Section 1500 et seq.</p> <p>CCP, Section (b) provides authority for the Office of the State Controller to request that the unclaimed property examination be conducted by third-party auditors on behalf of the State of California.</p>
<b>General Policies</b>	<p>Third-party auditors shall comply with all terms and conditions specified in the contract with the State Controller’s Office.</p> <p>Third-party auditors conducting examinations under California’s Unclaimed Property Program shall adhere to the following general policies:</p> <ol style="list-style-type: none"><li>1. In all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors.</li><li>2. The third-party auditors shall collectively possess sufficient training and experience to adequately perform the unclaimed property examination.</li><li>3. The third-party auditors shall not participate in examinations in which such participation could be construed as a conflict of interest. An example of a conflict of interest would be a contractor entering into an agreement with, or having an existing obligation to the holder, that is adverse to the interest of the State of California.</li></ol>

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From time to time, a contractor may solicit a holder for preparation of a voluntary report of the holder's unclaimed property. Such an engagement may be one wherein the contractor supplies expertise, guidance, and counseling to the holder with respect to submission of unclaimed property. This is a clear example of a conflict of interest. However, such a solicitation does not constitute a conflict of interest providing the contractor was representing the State's interest in the preparation of the voluntary report, and:

- a. Did not receive any fees, payments, or payments-in-kind from the holder for its services, and
  - b. Did not obtain any holder information that cannot be disclosed to the State of California because it is deemed confidential.
4. The third-party auditors shall maintain strict confidentiality of any records or documents gathered during the examination.
  - a. Contractor shall sign a confidentiality statement to preserve the integrity of state security and confidentiality.
  - b. Contractor shall sign a confidentiality statement to preserve the holder's interest and the reasonable expectation of privacy of the owner's interest.
  - c. Contractor shall maintain a file of confidentiality statements and provide such statements to the state upon request.
5. The third-party auditors shall fully explain to the holder:
  - a. The purpose, scope, and objectives of the examination.
  - b. The general approach of the examination and the procedures to be applied.
  - c. Circumstances in which estimation techniques may be used, along with a description of the methodology that may be employed.
  - d. The holder's right to appeal the results of the examination.
6. The third-party auditors shall not engage in any examinations without written consent from the State Controller's Office. The third-party auditors shall provide the holder with a copy of the State Controller's Office letter authorizing the contractor to perform the examination on the Controller's behalf.
7. Third-party auditors shall not subcontract any work without prior written authorization from the State Controller's Office. The third-party auditors are responsible for ensuring that any affiliated companies and any sub-contractors that are used during the examinations collectively possess sufficient training and experience to adequately perform the unclaimed property examination and fully comply with all other policies and procedures governing its conduct.

8. The third-party auditors shall properly document their review and make the working papers gathered during examinations available on demand for review by the State Controller's Office, the Bureau of State Audits, and the Attorney General's Office. Such working papers will include planning information and all related calculations, statistical analyses, and summarizations.
9. Upon request, the third-party auditors should provide the holder with relevant copies of working papers supporting any calculation made of unclaimed property escheatable to the State of California.
10. The third-party auditors agree to maintain working papers for a minimum of five years following the completion of the assignment, the escheatment of abandoned property, the resolution of any administrative appeal, or finality of judgment in any litigation, whichever is later.

## Opening Conference

1. Prior to the opening conference, the contractor should provide the holder with an approved form of the confidentiality agreement (copy attached), a copy of these policies and procedures, a copy of the State Controller's Office *Guidelines For Appealing an Examination of Unclaimed Property*, and the *Unclaimed Property Appeal Hearing Request* form.
2. During the opening conference, the contractor will:
  - a. Identify the time period to be covered by the examination and describe the general examination methods to be employed, including sampling and estimation.
  - b. Explain the unique aspect of California's Unclaimed Property Law as compared to other states. For example, the current escheat period for most abandoned property, with minor exceptions, is three years from the date it is unclaimed by the owner.
  - c. Identify, in writing, the State Controller's Office examination liaison to whom the contractor is accountable, including his or her full name, title, address, telephone and facsimile number, and advise the holder that it is free to discuss the examination directly with the liaison at any time regarding allegations of misconduct, unethical behavior, or significant disagreement relating to legal authority.
  - d. Identify, in writing, each and every contractor, contractor representative, employee, and agent who will take part in the examination.
  - e. Explain that the holder shall directly remit to the State of California any abandoned property identified during the examination as owing to the State of California.
  - f. Explain the holder's appeal rights and procedures and the contractor's responsibility during the appeal process.
  - g. Fully disclose to the holder its fee arrangement with the State Controller's Office.

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- h. Explain and describe the components of the examination, which will typically involve the following phases:

**Phase I: Basic Corporate Information Gathering; Site Selection**

Objective: Where all record keeping, accounting and escheat reporting are not centralized, to determine the particular entities/business units/third-party accounts to be examined in Phase II.

Process: This phase commences with a telephone conference call (the opening conference) between the contractor and the holder, at which time the contractor requests basic corporate data. The holder is expected to respond to the data request within an agreed-upon time period not to exceed 30 days.

**Phase II: Devising the Examination Program for a Recent Period**

Objective: To determine the amount of abandoned property generated during a recent period. To understand policies and procedures related to accounting for and reporting abandoned property during the recent period. To determine the amount of outstanding liability related to the stale-dated and dormant amounts contained in the holder's presently maintained internal accounting system.

Process: This phase commences with a written information request from the examiners to the holder. The holder is expected to be fully responsive to the examiners' request within an agreed-upon time period not to exceed 30 days.

**Phase III: Examination of Recent Period; Consistency**

Objective: To test the holder's assertions regarding its creation and treatment of abandoned property for a recent period. In those instances where the results of the recent period indicate a proper treatment of abandoned property, or the failure to generate material amounts of abandoned property, determine if these results would likely be reflective of prior periods.

Process: This phase commences with a written information request from the examiners to the holder and includes a mutually agreed-upon date for a site visit. The site visit is expected to take place within 30 days of the information request. During the site visit, the examiners analyze the holder's books and records and select items for testing. The holder is expected to produce documentation supporting its accounting for the items selected within an agreed-upon time period not to exceed 45 days. The examiners then make a second site visit to the holder at the agreed-upon date to review and analyze the documents produced.

**Phase IV: Detailed Testing Covering Entire Examination Period; Calculation of Amounts Due**

Objective: To determine the overall escheatable property due and owing for the entire period under examination. If, due to record retention policy constraints, less than the entire examination period will be examined,

determine the base period to be utilized; calculate total escheatable property generated during the base period (*i.e.*, amounts escheated, plus amounts suspended, plus amounts written off); extrapolate total escheatable property results from base period to entire period; then credit amounts actually escheated.

Process: This phase commences with discussions between the examiners and the holder regarding the design of the Phase IV examination program. The design of the examination program is expected to take 30 to 45 days. The examiners and the holder then decide upon a mutually agreed-upon date for a site visit. The site visit is expected to take place within 20 days of the end of the design of the Phase IV examination program. During the site visit, the examiners perform their testing procedures and select samples for testing. The holder is expected to produce documentation supporting its accounting for the items selected within 60 days. The examiners then make a second site visit at the expiration of the 60-day period to review and analyze the documents produced. If the holder believes it has been responsive to the examiners, but the examiners disagree, the holder has an additional 30 days to provide additional documentation to the examiners to support its position.

Because many holders have multiple divisions, subsidiaries, and affiliates, and generate various types of property that require examination, separate analyses and reports will be prepared, so that the SCO may receive property as amounts due are determined, and not wait for all areas to be completed.

### **Phase V: Closing Examination**

Objective: To reach agreement with the holder on the amount of escheatable property due and owing.

Process: This phase commences with the provision of a draft report to the holder. The holder has 20 days to respond to the draft. Discussions are held with the holder to finalize the findings, which are expected to occur within 15 days of the holder's initial response. Promptly thereafter, the final report is issued.

3. The examination period will be extended to include any year subsequent to the years initially included if the examination is completed after additional report years have elapsed.
4. The holder should be informed that if it has fully reliable records for the examination period, there is no need for estimation techniques. The holder should also be informed that if it (i) wants to question the accuracy of its own records or (ii) does not have records for the entire period or (iii) believes that accessing those records would be excessively burdensome, then a sampling and extrapolation will be performed. If records do exist but are not electronically accessible and are too voluminous to have the contractor manually keypunch or analyze them in a cost-effective manner, then the contractor may similarly determine to perform an estimation by means of sampling. The contractor should advise the holder of the parameters of the sampling technique and try to reach agreement with the holder as to the

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integrity thereof. Failure to reach such agreement, however, should not halt the examination. The holder should be informed that if sampling techniques are used, the liability determined by the contractor will represent a fair estimation only.

5. The contractor should fully explain to the holder the state appeal process and procedures. Further, the contractor should obtain from the holder written confirmation acknowledging understanding of the state appeal process and procedures.

## **Working Paper Requirements**

The contractor is required to prepare working papers that provide documentary evidence of the work performed in the examination. The working papers provide the basis for the review and evaluation of the work of the auditors and must be complete and accurate to provide proper support for findings, conclusions, and recommendations. Working papers must be clear and understandable, ensuring that supplementary explanations are not needed. Anyone using the working papers should be able to readily determine the purpose, nature, and scope of the work done and the auditor's conclusions. Working papers must be legible and neat. The information contained in working papers should be restricted to matters materially important, relevant, and useful to the objectives established for the examination. The working papers are a record that should be understandable to any professional many years later, whether or not the auditor preparing the working papers is available. Each work paper should "stand alone" and include adequate cross-references. The format for individual working papers should contain the following:

- **Headings.** All working papers should be identified with a heading that includes the name of the entity being examined, the dates of the examination period, a title describing the nature of the data on the working paper, and the examination identification number.
- **Signing, Dating, and Paginating.** Each lead working paper must be initialed and dated by the preparer and the reviewer, and all pages numbered.
- **Source, Purpose, Scope, Procedures, Findings and Conclusions.** Each of these items usually appear on every working paper. Occasionally, only the source and purpose are required, particularly when documents are obtained for background information. Procedures are necessary when the purpose of the working paper does not make them self-evident.
- **Indexing.** The essential elements of an indexing system are (i) standard prepared index; (ii) total pages to each working paper; and (iii) sequential numbering of all pages after the assignment is completed. This ensures that all working papers are accounted for and allows the auditor to detect any missing pages.
- **Cross-Referencing.** To highlight references among working papers, the cross-referencing page numbers should be written in red.
- **Legends and Tick Marks.** A legend should be included on each working paper that adequately explains audit procedures performed and represented by a particular tick mark. If several pages of information are to be tested, the tick mark legend should be on or referenced on the first page of the working paper.



**Sampling Requirements**

The two possible approaches to sampling are nonstatistical and statistical. Regardless of the sampling approach selected, an auditor must properly plan, perform, and evaluate the results of the sample in accordance with professional standards, *e.g.*, Statement of Auditing Standards No. 39, promulgated by the American Institute of Certified Public Accountants (AICPA).

**Cooperation Among the States**

The contractor shall notify the holder of any additional or unique state requirements during or after the opening and exit conferences. To the extent a holder has an issue with the contractor or the examination, the contractor is to confer with the first state that authorized the examination to assist in resolving the issue. To the extent possible, the examination should proceed while disputes are being resolved. This procedure should not be interpreted as states limiting their authority or waiving their rights to the state performing the examination.

**Closure**

After the holder and the contractor have agreed to the amount deliverable, the contractor will provide the holder and the SCO with an examination report summarizing the procedures performed and the conclusions reached, including the amount deliverable. The content and format of the report shall be in the manner prescribed by the State. The contractor's work papers will be subject to SCO review. The holder will be notified of any interest or penalties assessed on delinquent property.

**Correspondence**

The examination report and any relevant correspondence should be sent to the Unclaimed Property Program at the State Controller's Office, Division of Audits, Post Office Box 942850, Sacramento, California 94250-5874. Inquiries should be directed to the Unclaimed Property Program at (916) 324-8907.



# Appendix



**Attachment A**

# Confidentiality Agreement

[Date]

[Holder]

Dear

The Contractor, as agent for the States set forth on Annex A (the “States”; such term also including any additional States that may during the course of the Contractor’s examination also authorize the Contractor to act as its agent), has requested certain information from [Name of Holder] (the “Holder”) in connection with its abandoned property examination of the Holder’s books and records.

The Contractor shall treat as confidential and protect from disclosure to third parties, other than its own employees, agents, and representatives, and the States, all information that the Holder may furnish verbally and in writing to the Contractor or its agents, representatives, or employees in connection with its abandoned property examination; provided however, that this letter agreement shall not prohibit the Contractor from disclosing such information to (a) any person specifically approved by the Holder or (b) pursuant to or as required by law. The Contractor further agrees that it will not use any such information for any purpose other than the performance of such examination.

The information referred to in the preceding paragraph shall not include any information (i) previously known to the Contractor prior to the receipt of such information, (ii) subsequently acquired by the Contractor from a third party having an independent right to disclose such information, or (iii) that is now or later becomes publicly known through no fault of the Contractor.

Any failure or delay by the Holder in enforcing any provision of this letter agreement will not operate as a waiver of that provision, and the Holder will be entitled to injunctive relief, as well as all other remedies available at law or equity, if the Contractor breaches this letter agreement.

This letter agreement constitutes the entire agreement between us and may only be modified in writing. This letter agreement and all controversies arising from it shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of law principles.

Sincerely,

[Contractor, Employee, Agent, and Contractor Representative]

**AGREED TO:**

**[HOLDER]**

By: \_\_\_\_\_  
Name:

Title:



